

STATE OF MAINE  
PUBLIC UTILITIES COMMISSION

Docket No. 2004-88

July 7, 2004

MAINE PUBLIC SERVICE COMPANY  
Request for Approval Power Purchase  
Agreement with Irving Forest Products-  
Pinkham Sawmill

EXAMINER'S REPORT

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**NOTE: This Report contains the recommendation of the Advisory Staff and is in draft order format. It does not constitute formal Commission action. Parties and Proposed Parties may file responses or exceptions to this Report on or before July 16, 2004 at noon. It is expected that the Commission will consider this report at its deliberative session on July 21, 2004.**

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**I. SUMMARY**

By this Order, we approve a special rate contract between Maine Public Service Company (MPS) and Irving Forest Products, Inc., Pinkham Sawmill (Irving) pursuant to 35-A M.R.S.A. § 703. We also deny the late-filed petitions to intervene filed on behalf of McCain Foods, Inc. (McCain) and Huber Engineered Woods, LLC (Huber).

**II. BACKGROUND**

On February 3, 2004, MPS filed a Power Purchase and Customer Service Agreement (the Agreement) between MPS and Irving for approval pursuant to 35-A M.R.S.A. § 703. Irving operates a sawmill located in Ashland, Maine consisting primarily of facilities for producing dimension lumber. Irving is MPS's third largest customer, and according to MPS, has a realistic alternative to self-generate.

The term of the Agreement is three years. During the term, Irving agrees to not self-generate or otherwise bypass MPS's delivery system. By the terms of the Agreement, Irving shall pay for delivery service in accordance with the MPUC rate schedule except that the stranded cost component of Rate S-T will be discounted by 75%. The Agreement also provides for liquidated damages in the event that Irving self-generates or otherwise bypasses MPS's delivery system during the term.

MPS also states in its filing that "the Agreement requires the Commission's explicit determination that MPS be allowed to recover in rates to other customers any of the discount from Irving Forest Products that MPS is foregoing." Subsequent communications between Staff and MPS have clarified that, in addition to an accounting order that permits MPS to defer the "lost revenue" as a result of the special rate contract, MPS desires a Commission finding that MPS was prudent to enter into the Agreement.

As MPS asked for a Commission finding that it was prudent entering into the Agreement and for an accounting order to recover "lost revenue," the Commission treated MPS's filing as an adjudicatory proceeding and allowed petitions to intervene to be filed by April 13, 2004. Central Maine Power Company filed a timely intervention request, asking for limited intervention of "receiving filings and potentially filing a brief."

An initial case conference and technical conference was held on April 15, 2004. CMP's request for limited intervention was granted. The Commission Staff asked

technical questions to MPS representatives, many of which were ultimately treated as oral data requests. CMP consented to a follow-up data request process by which Advisory Staff would telephone MPS technical representatives directly without notice or opportunity for CMP to participate in the telephone calls.

On April 22, 2004, McCain and Huber filed late-filed petitions to intervene. Both McCain and Huber allege direct and substantial interests in this proceeding because each purchases electricity from MPS. Both allege that “[b]ecause the discount at issue in this case is so large, customers of MPS may be substantially affected by the Commission’s resolution of MPS’s request to recover the discount.” McCain and Huber state that their decision to intervene was delayed by their need to carefully consider the potential for the Irving discount to affects their T&D rates. Both Huber and McCain agree “to enter the case without delaying the proceeding or otherwise seeking extra process.”

On April 29, 2004, MPS filed a letter stating that the Company did not object to Huber’s and McCain’s late-filed petitions on the condition that neither party is permitted access to Designated Confidential Information. If the Examiner did not limit access to Designated Confidential Information, MPS asked for the right to file an objection to intervention.

On April 30, 2004, MPS answered the Staff’s oral data requests from the April 15 technical conference.

On May 4, 2004, Huber and McCain filed a Motion for Modification of Protective Order No. 1 and a memorandum of law in support of their motion. The Motion asks the Examiner to modify his April 29 Protective Order No. 1 to permit counsel for McCain and Huber and their consultant access to Designated Confidential Information. Huber and McCain allege that the Examiner erred by issuing a "permanent" rather than temporary protective order before restricting access to only governmental parties. Even if the protective order was appropriately issued, Huber and McCain assert, the Examiner must permit counsel and consultants to have access.

On May 5, 2004, Huber and McCain filed their First Set of Data Requests, directed at MPS.

On May 6, 2004, MPS filed an objection to the late-filed petitions by Huber and McCain. MPS asserts that McCain's and Huber's rates will not be affected by the Irving contract, because the Irving discount is only on the stranded costs portion of Irving's rate. As McCain and Huber both take service under special rate contracts that fix the stranded cost component of their T&D rates, MPS argues that McCain and Huber will not be affected by the Irving special rate contract or any future recovery of "lost revenue" or stranded costs not collected from Irving. Thus, MPS requests that the Commission deny McCain's and Huber's request for full intervenor status.

### III. DECISION

The Advisory Staff now has completed its review of the information supplied by MPS. Based on a review of this information, including the details regarding Irving's self-generation option, Advisory Staff agrees with MPS's conclusion that self-generation appears to be a viable, and economic, alternative for Irving. Moreover, Irving is a firm with sufficient economic and technical resources to carry out such an alternative. We, therefore, find it reasonable for MPS to offer Irving a discount from MPS's rate schedules in order to persuade Irving to defer installing self-generation.

Further, after comparing the cost of Irving's alternative to the cost of Irving purchasing electricity, we are satisfied that MPS has reasonably maximized the revenue contribution from Irving during the term of this contract.

Therefore, in addition to recommending that the Commission approve the special rate contract, the Advisory Staff recommends that the Commission find MPS to be prudent for entering into the contract and grant MPS its requested accounting order. We accept Staff's recommendations. We note that the accounting order is acceptable in this instance since we recently completed a revenue requirement investigation of MPS.

As the Advisory Staff was able to complete its review of MPS's request without further process beyond that that took place at the technical conference in April, we see

no need to allow further discovery or grant any process to petitioners who seek to intervene after the intervention deadline and after the technical conference was held. Therefore we deny Huber's and McCain's late-filed petitions to intervene.

Accordingly, we

O R D E R

1. That the Power Purchase and Customer Service Agreement between Maine Public Service Company and Irving Forest Products, Inc., Pinkham Sawmill is approved pursuant to 35-A M.R.S.A. § 703;

2. That Maine Public Service Company is authorized to account for the difference between the revenue it receives from Pinkham Sawmill pursuant to the Power Purchase & Customer Service Agreement and the revenue that was assumed would be received for the Pinkham Sawmill in MPS's rate case in Docket No. 2003-666 as a regulatory asset for later recovery in rates.

Respectfully submitted,

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James A. Buckley  
Hearing Examiner